

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KEN GAZIAN, PIERRE INVESTMENTS, INC., and ARAGADZ FOODS, INC. D/B/A DEVANCHE JEWELERS,	§ § § § § § § § §
Plaintiffs,	§ § § § § § § § §
vs.	§ § § § § § § § §
WELLS FARGO BANK, N.A., HUBERT KELLY and KELLY & KELLY, P.C.	Civil Action No. _____
Defendants.	§ § § § § § § § §

WELLS FARGO BANK, N.A.'S NOTICE OF REMOVAL

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) hereby removes this action from the County Court at Law No. 2 of Dallas County, Texas, on the following grounds.

1.

On August 13, 2012, Ken Gazian, Pierre Investments, Inc., and Aragadz Foods, Inc. d/b/a Devanche Jewelers (collectively “Plaintiffs”) filed suit against Wells Fargo & Company as well as Hubert Kelly and Kelly & Kelly, P.C. (the “Kelly Defendants”) in the County Court at Law No. 2 of Dallas County, Texas, in Cause No. CC-12-05002-B styled *Ken Gazian, Pierre Investments, Inc., and Aragadz Foods, Inc. d/b/a Devanche Jewelers v. Wells Fargo & Company, Hubert Kelly and Kelly & Kelly, P.C.* On August 28, 2012, before Wells Fargo & Company was served, Plaintiffs amended their pleadings. On September 10, 2012, Plaintiffs purported to serve the Texas Secretary of State as Wells Fargo’s agent for service, which was improper. On September 12, 2012, the Texas Secretary of State forwarded process to Corporation Service Company. On September 17, 2012, Corporation Service Company received process from the

Texas Secretary of State. Upon learning of the suit, Wells Fargo & Company notified Plaintiffs' counsel that the proper defendant, if any, is Wells Fargo. On October 18, 2012, a Rule 11 agreement was put in place wherein it was agreed, among other things, that (a) Plaintiffs would amend their pleadings to substitute Wells Fargo for Wells Fargo & Company, (b) the undersigned would accept service on behalf of Wells Fargo without the necessity of citation, (c) Wells Fargo would answer or otherwise respond to the suit within ten days following receipt of the amended pleading and (d) Wells Fargo was not waiving but instead retained all rights, arguments or defenses. On October 18, 2012, the undersigned received an unsigned copy of Plaintiffs' Second Amended Petition and Request for Disclosure naming Wells Fargo in lieu of Wells Fargo & Company. On October 25, 2012, a signed copy of Plaintiffs' Second Amended Petition and Request for Disclosure was served on Wells Fargo.

2.

This notice of removal is filed within the time required by 28 U.S.C. § 1446(b). The following items are attached to hereto:

- Exhibit A Certified copies of all pleadings and documents contained in the state court file, along with a certified copy of the civil docket sheet;
 - Exhibit B Rule 11 agreement dated October 18, 2012;
 - Exhibit C Plaintiffs' Second Amended Petition and Request for Disclosure; and
 - Exhibit D Kelly Defendants' consent to removal.

3.

Following is a list of all parties and their counsel of record:

- (a) Plaintiffs: Ken Gazian
Pierre Investments, Inc.
Aragadz Foods, Inc. d/b/a Devanche Jewelers

Counsel of Record: Darrell G. Adkerson
State Bar No. 00909700
ADKERSON, HAUDER & BEZNEY, P.C.
1400 Bryan Tower
2001 Bryan Street
Dallas, Texas 75201-3005
214/740-2500
214/740-2501 (Fax)

(b) Defendant: Wells Fargo Bank, N.A.

Counsel of Record: Shayne D. Moses
State Bar No. 14578980
David A. Palmer
State Bar No. 00794416
MOSES, PALMER & HOWELL, L.L.P.
Oil & Gas Building
309 W. 7th Street, Suite 815
Fort Worth, Texas 76102
817/255-9100
817/255-9199 (Fax)

(c) Defendants: Hubert Kelly
Kelly & Kelly, P.C.

Counsel of Record: Steven J. Anderson
State Bar No. 24045409
Amber R. Pickett
State Bar No. 24058046
LEWIS, BRISBOUS, BISGAARD & SMITH, LLP
901 Main Street, Suite 4100
Dallas, Texas 75202
214/722-7100
214/722-7111 (Fax)

4.

This Court has original jurisdiction to hear this case under 28 U.S.C. §§ 1332 and 1338 and 12 U.S.C. § 632. This case may be removed to this Court by Wells Fargo pursuant to the provisions of 28 U.S.C. § 1441 because Wells Fargo was, at the time this action was commenced, and still is, a national banking association with its main office located in Sioux

Falls, South Dakota.¹ The Kelly Defendants are citizens of Arizona. Specifically, Hubert Kelly resides in Arizona. Kelly & Kelly, P.C. is incorporated in Arizona and has its principal place of business in Arizona. Plaintiffs are citizens of Texas. Specifically, Ken Gazian resides in Texas. Pierre Investments, Inc. and Aragadz Foods, Inc. d/b/a Devanche Jewelers are both incorporated in Texas and have their principal places of business in Texas. Thus, there is complete diversity of citizenship between the parties. Moreover, Plaintiffs' claims for damages exceed \$75,000. Finally, this matter arises in whole or in part out of transactions involving international or foreign banking as Plaintiffs allege that at least one of the subject transactions involved the "purchase of U.S. securities from the London Stock Exchange"² Thus, consent to removal by all defendants is not required.³ Regardless, the Kelly Defendants have consented to removal as evidenced by Exhibit D attached hereto and incorporated herein by reference.

5.

Plaintiffs have demanded a jury.

6.

Immediately upon the filing of this Notice of Removal, Wells Fargo will give written notice to all counsel of record of the removal of this case and will file a copy of this Notice of Removal with the Clerk of the County Court at Law No. 2 of Dallas County, Texas, for filing with the papers of the state court suit.

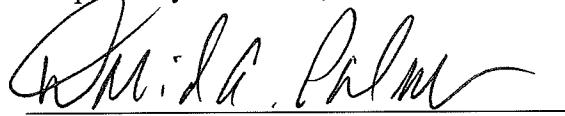
WHEREFORE, Wells Fargo requests that this Court assume jurisdiction of this suit.

¹ *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 318 (2006) (holding that, for purposes of 28 U.S.C. § 1348, a national bank is located only in the state of its main office as established in the bank's articles of association).

² Plaintiffs' Second Amended Petition and Request for Disclosure at ¶ 12.

³ *CI Int'l Fuels, Ltda. v. Helm Bank, S.A.*, 707 F.Supp.2d 1351, 1354-55 (S.D. Fla. 2010).

Respectfully submitted,



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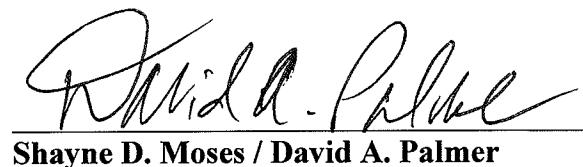
**ATTORNEYS FOR
WELLS FARGO BANK, N.A.**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served on October 26, 2012, by facsimile and certified mail, return receipt requested, to the following persons as addressed:

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